IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.Misc. No.78773-M of 2006
Date of Decision:- 19.04.2007

Sihoti Devi ....Petitioner(s)

through
Mr.Naveen Gupta, Advocate

vs.

State of Haryana & ors. ....Respondent(s)

through
Mr.R.D.Sharma, DAG, Haryana.

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CORAM:-HON'BLE MR.JUSTICE SURYA KANT.

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1) Whether Reporters of the local papers may be allowed to see the judgment?
2) To be referred to the Reporters or not?
3) Whether the judgment should be reported in the Digest?

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SURYA KANT, J.

In this petition under Section 482 Cr.P.C., the petitioner seeks a direction to entrust the investigation of F.I.R.No.184 dated 8.10.2006 under Section 302/34 IPC registered at Police Station Sadar Ambala to an independent agency and get the same investigated in a fair and impartial manner.

The petitioner is mother of deceased Deep Chand, who at the relevant time was the Sarpanch of Gram Panchayat of Village Dhulkot.

The above-stated F.I.R. was registered on the statement made by the petitioner in which she alleged that on 3.10.2006 her son (deceased Deep Chand) was at home and was down with fever; he received a call on his mobile phone at about 10.00 A.M. to which her deceased son replied

that he was suffering from fever and was not in a position to come out and meet the caller; the caller allegedly told the petitioner's son that he must come irrespective of the fever; the petitioner's son allegedly left the house on his motorcycle immediately; in the evening one Smt.Jagiro, Member, Block Samiti, came to the petitioner's house at about 7.00 P.M. and told that her son Deep Chand had met with an accident; the petitioner along with Prem son of Mahinder Kumar, her daughter-in-law Manju as well as some other persons went to the Civil Hospital, Ambala City. Meanwhile, some more persons from the village also reached the hospital. The son of the petitioner was in an unconscious state and was brought to Government Medical College and Hospital, Sector 32, Chandigarh where he was got admitted. The petitioner alleges that there was a big round spot on the forehead of her son and his right shoulder was also bleeding; the chest had allegedly become blue and he was also bleeding from his nose, mouth and ears. The petitioner thereafter was taken to Sector 9 Police Station Ambala where she saw the motorcycle of her son but there was no signs or impact of any accident on the motorcycle. Thereafter she is alleged to have visited the place of the accident and there too she could not notice any sign of an accident having taken place, though a pool of blood was there. The petitioner suspected that her son had not met with an accident rather he was killed by someone, as he was receiving threats to his life from various persons.

After investigation, the police of District Ambala concluded that the petitioner's son had actually met with an accident and due to the head injury, he became unconscious and thereafter died. To arrive at the aforesaid conclusion, the police relied upon the statements made by the

alleged eye-witnesses to the accident who claimed that when the petitioner's son was coming on motorcycle from the side of Patel Nagar, a cyclist along with a pillion-rider suddenly came in front of him and in order to ensure that the motorcycle did not strike against the cycle, the petitioner's son allegedly turned his vehicle towards right side and applied brakes abruptly as a result of which he slipped and fell down from the motorcycle.

In the post-mortem report eight injuries were found on the body of the deceased.

Much before the alleged accident which took place on 3.10.2006, the son of the petitioner had made written complaints dated 23.5.2006 (Annexure P-3) and 31.8.2006 (Annexure P-5). It is contended on behalf of the petitioner that the petitioner's son was actually murdered by and/or at the instance of the persons whose names find mention in those complaints and who had been threatening him with dire consequences.

On the other hand, the theory of road accident is sought to be substantiated by the local police on the grounds that:- (i) the head injury as mentioned in the post-mortem report and which according to the doctor could be suffered in a road accident, has been found to be sufficient to cause death in the ordinary course of nature; (ii) there are more than ten eye-witnesses who saw the accident; and (iii)the mechanic's report of the motorcycle driven by the deceased Deep Chand dated 11.10.2006 (Annexure R-3) also supports that the accident had actually taken place.

As regard to the complaints which the deceased Sarpanch had made in May/August, 2006, the Police Authorities rely upon the alleged compromise Annexures R-4/2 and R-5 appended with the written statement.

If one believes the alleged eye-witness' account relied upon by

the local police as contained in the statement of one Brij Mohan Lal (Annexure R-2), it is more than difficult to reconcile the same with the postmortem report of the deceased. The manner in which the deceased allegedly slipped and fell down from the motorcycle and received a head injury *prima facie* appears to be inconsistent with the post mortem report according to which apart from the fatal head injury, the deceased had suffered two fractures as well as 3-4 other injuries. The parts of the body where the injuries are claimed to have been received in a singular fall, also dissuade from forming any definite opinion that these injuries could be received in a roadside accident.

Though it appears that during the course of investigation, the details in respect of the calls made or received on the mobile phone of the deceased have been obtained by the Investigating Agency, however, the report is conspicuously silent with regard to description of the persons from whom these calls were received or to whom a call was made from the mobile number of deceased even at about 6.08 P.M. Similarly, no effort has been made by the Investigating Agency to find out as to who gave a call to the deceased at 6.14 P.M. and whether the said call was received by him or not. Needless to say that even during the period under doubt when the alleged accident had taken place, the mobile phone of the deceased has been used for making and receiving more than one call.

It, thus, appears that had the investigation been carried out from all angles, it would have been easier to firmly conclude as to what was the real cause of death of the deceased. This gives rise to a strong suspicion to the impartiality and fairness of the investigation carried out by the local police though it is not desirable or expedient to express any definite view in

relation thereto.

For the reasons afore-stated and having regard to the gravity of the offence alleged and in order to ensure that the petitioner does not carry any sense of injustice in her mind even remotely, I am of the considered view that the matter needs to be re-investigated by a specialized agency of the State Police like the Crime Branch.

Consequently, this petition is allowed to the extent that the investigation of F.I.R.No.184 dated 8.10.2006 is ordered to be handed over to the Crime Branch of the Haryana Police. The Additional Director General of Police (Crime Branch), Haryana is further directed to get the matter re-investigated from an officer not below the rank of Dy.S.P. who shall re-investigate the case within a period of two months from the date of receipt of certified copy of this order.

Till then, the cancellation report prepared by the local police shall not be presented to the Court concerned.

Let a copy of this order be given Dasti to learned counsel for the petitioner on payment of usual charges.

April 19, 2007 **(SURYA KANT)**
poonam **JUDGE**